



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

Mr. J. Robert Giddings
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR98-2511

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 120450.

The University of Texas System (the university) has received four requests from the same individual. The requestor seeks: 1) all information related to a case in justice court, *Initiate Publications, Inc. v. Civic Pride*, No. 061997 (J. P. Ct., Precinct 5, Travis County, Tex.), 2) all information concerning representations made by the university about the Austin Software Council in an August 17, 1998 letter to this office, and 3) all information concerning the university's representation that the Austin Software Council is a part of the university and its transition, and that Ms. Blair is an employee of the university. You indicate that you will release all pleadings filed in the lawsuit mentioned by the requestor. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (documents filed with the court are public documents and must generally be released). You also explain that you have furnished the requestor with a copy of the transmittal letters the university sent to the Open Records Division of the Office of the Attorney General. You do not seek to withhold this correspondence. You argue that the remaining requested information is excepted from required public disclosure by section 552.101, 552.103, 552.107 and 552.111 of the Government Code.

You initially argue that you need not answer factual questions posed by the requestor. We agree that to the extent that the requestor is seeking answers to factual questions, the university need not respond. Open Records Decision Nos. 555 (1990), 379 (1983), 347 (1982). The requestor, however, seeks documents and information associated with his requests. Thus, the university must make a good faith effort to relate the requests to information held by it. Open Records Decision No. 87 (1975). You have submitted the responsive information you seek to withhold. We will, therefore, consider your arguments against disclosure for this information.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The university has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The university must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the requestor filed a lawsuit against the Austin Software Council and one of its employees, Ms. Cerise Blair. *Initiate Publications, Inc. v. Civic Pride*, No. 061997 (J. P. Ct., Precinct 5, Travis County, Tex.). You indicate that both parties were formerly a part of the university before the Austin Software Council incorporated and are represented by the state. Although the lawsuit appears to have been dismissed, the plaintiff has filed a motion for new trial. We presume from your arguments to this office that the litigation is still pending. If this is the case, you have shown that litigation is pending. Further, the requested information relates to the pending suit. *Texas Legal Found.*, 958 S.W.2d at 483. Consequently, with the exception of the information noted below and documents filed with the court, you may withhold the requested information at this time.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we make a determination under section 552.103, we need not consider your additional arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be

relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 120450

Enclosures: Submitted documents

cc: Stephen N. Lisson
Initiate!!
P.O. Box 2013
Austin, TX 78768-2013
(w/o enclosures)